

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 04-0269**  
**Gross Income Tax**  
**For the Year 2001**

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**ISSUE**

**Gross Income Tax—Sale of an ownership interest**

**Authority:** IC 6-8.1-5-1(b); IC 6-2.1-1-2; IC 6-2.1-1-11; IC 6-2.1-2-2; SFN Shareholders Grantor Trust v. Department of Revenue, 603 N.E.2d 194 (Ind. Tax Ct. 1992); LOF 95-0524; SLOF 97-0043; Revenue Ruling #2000-04IT; Revenue Ruling #2002-02IT; Treasury Regulation 26 C.F.R. §301.7701-3(b).

Taxpayer protests the assessment of gross income tax on the sale of its membership interest.

**STATEMENT OF FACTS**

*Healthcare* is a QRS (Qualified Real Estate Investment Trust Subsidiary) of *Properties*; *Healthcare* is a wholly owned subsidiary of *Properties*. *Properties* is a REIT (Real Estate Investment Trust). One of *Healthcare's* holdings was *LLC*; *Healthcare* held a 100% membership interest in *LLC*. In 2001, *Healthcare* sold 100% of its membership interest in *LLC* to an unrelated third party.

For federal income tax purposes, *Healthcare* and *LLC* elected to be treated as disregarded entities. For Indiana adjusted gross income tax purposes, all income was reported under *Properties*, the parent of *Healthcare*. For Indiana gross income tax purposes, *Healthcare* filed a separate return to report gross income tax only. Included in the receipts of *Healthcare's* gross income were the receipts of *LLC*, which included the rental receipts from the rental of Indiana properties. *Healthcare* asserts that the sale of its membership interest in *LLC* was the sale of an intangible and that the sale was not situated in Indiana. *Healthcare* argues that its commercial domicile is in Texas and that it had no business situs in Indiana. For this reason, when the sale of the membership interest occurred *Healthcare* did not include these gross receipts as being taxable in Indiana.

The Department issued an assessment on the basis that the sale of the membership interest in *LLC* was a sale of tangible assets subject to Indiana gross income tax. Taxpayer filed a protest and a hearing was held.

## **DISCUSSION**

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b).

For the year at issue, Indiana imposed a gross income tax. The gross income tax defined gross income as all gross receipts a taxpayer receives. *See* IC 6-2.1-1-2 (1998) (repealed 2003). IC 6-2.1-1-11 (1998) (repealed 2003) defined "receives" to mean the possession of income and the payment of a taxpayer's expense. IC 6-2.1-2-2 [repealed] imposed the gross income tax on the entire gross income of a taxpayer who is a resident or domiciliary of Indiana and the taxable gross income derived from activities, businesses, or any other sources within Indiana by a taxpayer who is not a resident or domiciliary of Indiana.

*Properties* and *Healthcare* were commercially domiciled in Texas. *LLC*, a Delaware limited liability company, had its principal office in Texas and owned two facilities in Indiana. In previous years, *Healthcare* paid Indiana gross income tax on the Indiana rental receipts received by *LLC* and passed through to *Healthcare*. As a single-member limited liability company, *LLC* was disregarded as a separate entity under Treasury Regulation 26 C.F.R. §301.7701-3(b). For federal income tax purposes, *Properties*, *Healthcare*, and *LLC* filed as one taxpayer under *Properties*. Likewise, for Indiana adjusted gross income tax purposes, *Properties* was the sole taxpayer. *Healthcare* was required to file a separate return for gross income tax purposes.

The Indiana Tax Court in SFN Shareholders Grantor Trust v. Department of Revenue, 603 N.E.2d 194 (Ind. Tax Ct. 1992) held that a non-resident holding company that owned 100% of a corporation's stock did not have a business situs in Indiana based on the corporation's ownership of a warehouse in Indiana; the non-resident holding company did not own the corporate assets for Indiana gross income tax purposes. The court also held that the shares of stock did not have an Indiana business situs. *Id.* at 197-98. The court also noted that because of separate identity, the shareholders were unable to sell corporate assets; the shareholders only could sell their shares. The doctrine of separate corporate identity does not break down merely because the corporation is a subsidiary—even if it is wholly owned. *Id.* at 198. The Tax Court has stated that it will not lightly disregard corporate form even in cases of close corporate relationship between a parent and subsidiary. *Id.* at 198-99. The Department has issued letters of findings and revenue rulings adhering to SFN. *See* LOF 95-0524, SLOF 97-0043, Revenue Ruling #2000-04IT, and Revenue Ruling #2002-02IT.

A reading of the contract to sell *LLC* indicates that the membership interest was sold. The contract and the ancillary documents outline what tangible assets were transferred. The sale of *LLC* was a sale of a membership interest. *Healthcare* was commercially domiciled in Texas and had no Indiana business situs. Therefore, the Indiana gross income tax assessment issued by the Department cannot be sustained.

## **FINDING**

For the reasons stated above, Taxpayer's protest is sustained.